



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/159116

PRELIMINARY RECITALS

Pursuant to a petition filed July 15, 2014, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Professional Services Group - PSG in regard to Kinship Care, a hearing was held on August 07, 2014, at Milwaukee, Wisconsin.

The issues for determination are (1) is whether an administrative law judge from the Division of Hearings and Appeals has jurisdiction to review a Kinship Care discontinuance based on a criminal arrest or conviction and (2) whether the agency correctly discontinued petitioner's Kinship benefits because the living arrangement is not in the best interests of the children.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Tracy Pachowitz, Program Manager
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. Petitioner was reassessed for Kinship Care in June 2014. After a criminal background check, the agency denied Kinship on June 25, 2014 for petitioner's three grandchildren because petitioner's adult son in the home had a criminal arrest, charge and conviction. Exhibits 2, 4 and 5. Petitioner appealed the matter to the Bureau of Milwaukee Child Welfare (BMCW). That BMCW review upheld the denial on July 11, 2014. See Exhibit 3.
3. On July 9, 2014 the agency also issued a notice to the petitioner stating that it was denying Kinship benefits for petitioner's two grandsons because it was not in the best interest of the children. Exhibit 1.

DISCUSSION

- I. Whether an administrative law judge from the Division of Hearings and Appeals has jurisdiction to review a Kinship Care discontinuance based on a criminal arrest or conviction.

The Kinship Care benefit is a Wisconsin public assistance payment of \$226 (per month in 2014 and per child) paid to a qualified relative who bears no legal responsibility to support the child. Wis. Stats., §48.57(3m)(am). The Kinship Care statute, in relevant part here, requires the agency to assess whether the placement is necessary, whether it is in the best interests of the child, and whether an adult in the home has any arrests or convictions that could adversely affect the child. *Id.*

The appeal process for cases which are denied based upon the criminal background check is found at Wis. Stat. §48.57(3p)(h). The statute provides that such denials are not subject to review by the Division of Hearings and Appeals (DHA), but rather by the person designated by the secretary, which is the Bureau of Milwaukee Child Welfare (BMCW). See Exhibit 2. Petitioner did request such a review and the denial was upheld. See Exhibit 3.

It is clear that the DHA does not have jurisdiction to review this issue. It is the local agency's responsibility and they have made their determination.

- II. Whether the agency correctly discontinued petitioner's Kinship benefits because the living arrangement is not in the best interests of the children.

All other denial reasons for Kinship Care can be appealed to the Division of Hearings and Appeals. See Wis. Stats., §48.57(3m)(f). This includes whether the denial reason given here that the living arrangement is not in the best interests of the children. See Wis. Stats., §48.57(3m)(am)1m. The agency's position was that the living arrangement was not in the best interests of the children because of the criminal conviction, ongoing CPS issues, and a substantiation of abuse against the adult son made by the BMCW. Even if I found the agency's evidence to be so insubstantial so as to overturn the decision to deny based on the best interests of the children – which I do not – the matter is moot in that a decision on this issue would have no practical effect on the denial already made for the conviction.

For the foregoing reasons, the appeal will be dismissed.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals does not have jurisdiction over denials of Kinship Care due to criminal background checks.
2. The matter is moot as to whether the agency correctly discontinued petitioner's Kinship benefits because the living arrangement is not in the best interests of the children.

THEREFORE, it is

ORDERED

That the petition herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

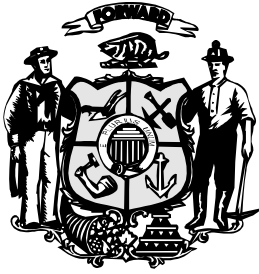
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of October, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 21, 2014.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care